Hon. P.C. Pant, J.

Heard learned counsel for the petitioner and learned counsel for the respondent no.1.

By means of this petition, the petitioner (defendant no.3) has challenged the order of rejection of his application for directing the plaintiff to file original 'will' in original suit no. 59 of 2004. Perusal of the impugned order shows that the application of the petitioner was rejected on the ground that 'will' is not the basis of the suit, nor will is alleged to be in possession of the plaintiff, rather it is pleaded that defendant no.2 has been made guardian in respect of the property allegedly bequeathed in favour of the defendant no. 4 and 5. I see no illegality in the impugned order as in the suit for partition the plaintiff has claimed his one fourth share without any reliance on 'will', as to his share. AS such the provisions of Order VII Rule 14 of the Code of Civil Procedure, 1908, does not get attracted in the matter.

Without expressing any opinion as to the final merits of the case, the petition is dismissed summarily with the observation that the defendant no.3 may request after filing its written statement before the trail court (if not already filed) for production of the document from the defendant no.2 or the party in whose possession the same is found.

Dt. 08.12.2004 (P.C. Pant, J.)

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